

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

January 12, 2007

180-Day Exp. Date: February 3, 2007

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) OA-3366 for a Single Family Residence (SFR) with Associated Improvements and Agricultural Use (Horse Barn)

APPLICANT: He Mea Waiwai Loa LLC.
Peter Cooper

LANDOWNER: He Mea Waiwai Loa LLC.

LOCATION: Kokokahi, Keana, Kaneohe, Koolaupoko, Oahu

TMK: (1) 4-5-032:001

AREA OF PARCEL Approximately (\approx) 56.288 Acres

USE: \approx 5 Acres

SUBZONE: General

BACKGROUND:

The Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) OA-1188 for a Single Family Residence (SFR) allowing for the construction of a two-story, wooden A-frame dwelling with a building footprint of \approx 1600 ft² and a gravel driveway on February 22, 1980. Prior to obtaining all required approvals, grading of the property for construction of the SFR commenced. The landowner was found in violation of the conditions of CDUP OA-1188 in May 1982. The violation was resolved and the SFR was completed. The Board also approved CDUP OA-1861 for a telecommunication facility on the subject parcel on April 22, 1988.

In 2001, the SFR was completely destroyed by fire and the site has been vacant since. The applicant acquired fee title to the property in September 2005. Staff notes the subject property is currently for sale.

DESCRIPTION OF AREA AND CURRENT USE

The subject parcel is situated on the northern slopes of Oneawa Hills that separates Kaneohe from Kailua at Keana, Kaneohe, island of Oahu, 45-234A Kokokahi Place. The proposed 5 acre project site exists within a portion of the \approx 56.3 acre TMK: (1) 4-5-032:001. The property is surrounded by single-family residential development to the north, northeast, west and southwest, and undeveloped forest Conservation lands (mauka) to the south and southeast (**Exhibit 1, 2 & 3**).

The topography of the subject property consists of three shallow valleys separated by two distinct ridges that run northward towards the ocean. Slopes throughout the property are generally greater than 20% but less than 50% except for the project site. The terrain in the project area is fairly flat due to previous grading for the former residence.

The majority of the property is located in the State Conservation Land Use District, General subzone with the exception of a small portion \approx 6,000 ft² located within the State Urban Land Use District. Overhead electrical power lines run in a north-south direction through the western portion of the property. The telecommunication facility site is situated near the southernmost corner of the property at the top of the ridgeline. An existing gravel driveway, remnants of the previous residence, and previously cleared areas are part of the visible development on the property. Although large portions of the property remain wooded and undeveloped, the proposed site was previously cleared and graded.

The site for the proposed SFR is at 250 feet elevation, and the proposed horse barn site is at 210 feet elevation. The area separating the two level building areas gradually slopes downward, with the slope varying 15% to 40%. Below the proposed horse barn, the property continues to steadily descend to the neighboring homes below located off of Kaneohe Bay Drive (**Exhibit 4**).

Soils within the project area are limited to Alaeloa silty clay. This soil is characterized by a rapid to very rapid runoff rate, and the erosion hazard is severe. There are no perennial streams or wetlands on the project site or in the immediate vicinity.

According to the applicant, access to the property shall be from Kokokahi Place. An easement for access over a neighboring parcel in favor of the subject parcel allows the driveway connection and access to the property from Kokokahi Place (**Exhibit 5**). Kokokahi Place is a narrow one-lane steep and windy roadway owned by the City. It is a non-standard roadway, about 14 feet in width, without sidewalks, curbs, gutters or subsurface drainage structures. An existing dirt road provides access from the property line to the project site (**Exhibit 6**). According to the applicant, domestic water, electrical service and telephone services are available from existing systems due to the former residence.

According to the applicant, flora consists of predominately introduced species such as guava, java plum, koa hale, octopus tree, Brazilian pepper tree, fern tree, mango, avocado,

monkey pods, African tulip, ironwood, wedelia, Chinese banyan, swamp mahogany, dracaena and the ti leaf. Fauna consists of feral animals including domesticated dogs and cats, mongoose, pigs, rats and mice. It is believed that no rare, threatened or endangered species exist within the project site.

According to the applicant, the only known archaeological site in the vicinity of the project site is Ahukini Heiau. "*Ahukini was a small structure, 70 by 127 feet, built on the top of an elevation 1200 feet from the sea. The ground slopes away from the heiau in all directions. The heiau was relocated in 1952 on the back of the ridge to the west of Kokokahi Road*"¹. A field investigation conducted by Cultural Surveys Hawaii in December 2006 located the now-demolished Heiau east of the project site adjacent to a home on Kokokahi Place.

According to the applicant, cultural, historic and archaeological resources are not expected to be present since the site has been previously disturbed and occupied by development related to the former residence. The project site is not known for traditional cultural practices for modern-day subsistence, cultural, or religious purposes.

PROPOSED USE

The proposed use is to construct a Single Family Residence with associated improvements and a detached horse barn concentrated on approximately 5 acres of land.

According to the applicant, the proposed SFR would be designed to accommodate a family of 4. The $\approx 4,513$ ft² SFR living area consists of 3 bedrooms, 4 bathrooms, a kitchen, dining room, living room, family room, hallways, a stairway and a 2-car garage. A 368 ft² pool, a 60 ft² Jacuzzi, a 54 ft² Pavilion and an entrance gate near the start of the dirt road near Kokokahi Place are also proposed (**Exhibit 7, 8, 9, 10 & 11**).

The house would consist of two floors and would be sited to fit the existing topography and surrounding landscape. The house would be topped with a pitch roof and would be less than 25 feet in height. The planned pool would also function to provide fire protection as part of a fire contingency plan.

In addition, a ≈ 20 ft. in height, 1596 ft² horse barn is proposed. The barn will consist of three stalls, a tack room, a feed and equipment room and a sit-up room containing storage and a restroom. The barn is proposed on a second level section of the project site that sits at an elevation ≈ 30 feet lower, below the main house. Design of the barn would emulate architectural elements of the main house, with similar building style and complementary colors (**Exhibit 12**).

According to the applicant, the horse barn would support the applicant's personal equestrian interests and enable the applicant to keep no more than three horses on the property. No horses would be bred for commercial use, nor utilized for any commercial venture. The horses would be kept as personal pets and would receive daily care and

¹ Summers, Catherine C. & Sterling, Elspeth P. 1978. Sites of Oahu. Bishop Museum Press, Honolulu, p.210.

maintenance to prevent nuisances to the neighboring residences. A management plan for the care and maintenance of the horses has been provided.

According to the Management Plan, in order to mitigate insects and odors, daily removal of manure and soiled bedding will be required. 120 pounds of manure and soiled bedding is proposed to be generated daily. The material is to be placed in a two-yard dumpster to be located at the upper auto-court adjacent to the SFR and removed weekly via Kokokahi Place.

A fenced enclosure constructed around the horse barn would keep the horses contained within the limits of the pasture. The pasture area would encompass a total area of ≈ 3.5 acres on a previously graded portion. A 5.5-foot high wooden fence designed with cedar posts set no more than 12 feet apart would surround the pasture. The fencing would be set back from the neighboring properties, with a minimum distance of about 40 feet between the corral fencing and the property line of the nearest homes neighboring the project site (**Exhibit 13**).

There is no existing easement that allows for a connection to the city's wastewater system. An existing cesspool that was used by the previous residence would be drained and backfilled and a new septic tank and leach field waste disposal system in compliance with Department of Health would be installed.

According to the applicant, because the property was previously graded, construction would not require grading or alterations to the existing terrain with the exception of the groundwork necessary for the septic tank and leachfield system.

The structural remnants of the previous residence currently existing on-site would be demolished and the proposed main house would be constructed over the area once occupied by the previously permitted structure. None of the mature trees currently on the property would be disturbed or displaced, with the exception of the dead trees that pose a fire hazard and a banyan tree in the vicinity of the proposed barn that has been compromised by the growth of a eucalyptus tree that fell into its trunk. New landscaping would be limited to covering dirt areas. No formal landscaping plan has been prepared as the applicant intends minimal landscaping improvements that take advantage of vegetation currently growing on the property. The applicant would continue to maintain the areas within the boundaries of the project site for the duration of the home's existence.

All demolition and construction activities would utilize erosion control measures to minimize runoff and sediment discharged from the project site, including limiting the site area cleared for construction and reestablishing ground cover as soon as possible.

The proposal is expected to have a minimal impact on visual resources. The proposed SFR would be obscured by the intervening ridges and tall trees surrounding the project site and would be minimally visible from surrounding areas. Views of the proposed barn may be slightly visible from Kaneohe Bay Drive, although large sections of the barn structure

would be screened by the existing homes along Kaneohe Bay Drive and the canopies of the large monkeypod trees currently on the project site (**Exhibit 14**).

During construction, there will be short-termed impacts including noise associated with the use of construction machinery, increased dust, and the exposure of soil surfaces. Air quality may be affected by fugitive dust. Impacts are addressed by adherence to municipal noise regulations, project-specific permit conditions and Best Management Practices (BMP).

ALTERNATIVES

The applicant discussed two alternatives: Development of the R-10 Residential zoned section and the No Action Alternative. The development of the R-10 portion of the parcel would not include construction of the proposed barn and corral because the area is too steep to adequately accommodate such uses. Although siting the residence in the R-10 portion of the property would support the purpose and intent of zoning district, construction in this area would not allow the applicant to keep horses on his property and would not meet the applicant's desire to build a house secluded from neighboring homes.

The No Action Alternative would not provide a primary residence for the applicant and would deny the applicant full enjoyment and use of his property. Both alternatives were rejected because it would not meet the needs of the owners.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Oahu District Land, Historic Preservation; the **City and County of Honolulu**: Department of Planning and the Kaneohe Neighborhood Board. In addition, the application and Final Environmental Assessment was also sent to the Kokokahi Community Association and the nearest public library, the Kaneohe Public Library, to make this information readily available to those who may wish to review it.

Comments were received and summarized from the following:

STATE OF HAWAII

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

- 1) Consult with nearby owners who may be impacted by the horses.
- 2) Describe the potential odor and noise impacts from the horses to the neighbors.

- 3) The applicant should use a dumpster that has a cover to assure flies will not be able to get to the manure.

Applicant's Response

- 1) All adjoining property owners were invited to an informal open house and site visit on October 29, 2006.
- 2) The applicant shared his plans to replace the previous house and construct a barn on his property. Presentation of the proposal and follow-up attendance to the Kaneohe Neighborhood Board meetings were initiated in June 2006. Copies of the application and Draft Environmental Assessment that discussed the potential air quality and noise impacts were distributed to the Kokokahi Community Association, the Neighborhood Board and the Kaneohe Library.
- 3) A covered dumpster would be utilized.

OFFICE OF HAWAIIAN AFFAIRS

Should iwi or native Hawaiian cultural or traditional deposits be found during ground disturbance, work will cease, and the appropriate agencies will be contacted pursuant to applicable law. We recommend the Koolaupoko Hawaiian Civic Club be contacted to expand the consultation component of the environmental Assessment.

Applicant's Response

All construction activities and ground disturbance will be conducted accordingly. In the Draft EA, we have noted that, "In the event that any significant archaeological resources or deposits are found during the development of the project, construction would be halted and immediate consultation with the SHPD would be sought in accordance with applicable regulations." We have consulted with the Koolaupoko Hawaiian Civic Club who visited the project site.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Engineering

We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone X, an area determined to be outside the 500-year floodplain and Zone D, an area in which flood hazards are undetermined.

Forestry & Wildlife (DOFAW)

No comment

Historic Preservation (SHPD)

Based on information provided, we believe that Ahukini Heiau is within the area of potential effect (APE). Not to the east of the subject APE, as we originally indicated. We must rescind our earlier letter and determination that the proposed undertaking would have "no effect" on historically-significant resources. We are concerned that there may be unidentified historically-significant resources, including human remains/burials, present in subsurface deposits within the APE of the proposed undertaking.

We believe that any adverse effects may be mitigated through precautionary monitoring. We recommend the following conditions be attached to the subject permit, should it be approved.

- 1) A qualified archaeological monitor shall be present during all ground-altering activities conducted in the project area in order to document any historic properties which may be encountered during the proposed undertakings and to provide mitigation measures as necessary. An acceptable archaeological monitoring plan will need to be submitted to the State Historic Preservation Division for review, prior to the commencement of any ground-altering activities.
- 2) The State Historic Preservation Division shall be notified via facsimile upon the on-set and completion of the proposed undertaking.

Should initial excavation reveal that all of the new digging is in previously disturbed stratum; the monitoring program may be suspended through consultation with SHPD.

Applicant's Response

In response to your comments, Cultural Surveys Hawaii was consulted to determine the location and present status of Ahukini Heiau. Based on an archaeological field inspection and literature review conducted, we propose that Ahukini Heiau was located east of the project site adjacent to 45-254 Kokokahi Drive and not on the area presently proposed for development.

Land Division

No comment

CITY & COUNTY OF HONOLULU

DEPARTMENT OF PLANNING & PERMITTING (DPP)

The subject parcel is consistent with the key element in the Koolaupoko Sustainable Communities Plan (SCP) vision that calls for preserving and promoting open space throughout the region.

The Final EA should include a brief description of the existing use on the R-10 Residential District zoned portion of the subject parcel. Please confirm the location of the 10-foot wide easement and state whom it is in favor of. Information on the access easement should be included in the Traffic and Roadways section of the Final EA. A description of the visual impact of the proposed horse barn and what mitigative measures, if any, are necessary and landscape screening of the proposed horse barn should also be included in the Final EA.

Split-zoning should be described. Alternatives considered should include an alternative that proposes to build the SFR in the R-10 zoned portion which supports the purpose and intent of the R-10 and P-1 zoning districts. Siting the house on the R-10 portion would likely have less of a visual impact since it would be located approximately 100 feet below the site of the proposed action.

The Final EA should describe whether the proposed action or adjacent properties may be threatened by rockfall/boulder hazards. If hazards do exist, mitigation measures should also be addressed. Drainage impacts to adjacent properties due to increase in runoff should be addressed. A drainage report may be required at a later date. In lieu of a drainage report, a statement in the Final EA that the increase in runoff would not adversely impact adjacent properties may be acceptable.

The proposed action will be serviced by a privately owned and operated septic tank and leach field system and approval would fall under the jurisdiction of the State Department of Health.

Applicant's Response

We note that the parcel is consistent with the key element in the Koolaupoko Sustainable Communities Plan.

The R-10 portion of the parcel is currently undeveloped and vacant. The Final EA has been revised to state that there is an easement for access and utilities over TMK: (1) 4-5-0341:077 in favor of the subject parcel. The Final EA has been revised to indicate more clearly the location of the easement. There is discussion indicating that the proposed residence and barn would be minimally visible from surrounding areas, with appropriate colors and materials to further screen the structures. The proposed barn would be screened from view by large monkeypod trees as the Final EA illustrates.

Discussion of split zoning has been included in the Final EA. An alternative that proposes to build the SFR on the R-10 residential zoned portion of the subject property will be discussed in the Final EA. Although the development of the SFR would be consistent with the R-10 Residential Zoning district, construction in this area would not meet the applicant's desire to build a house away from neighboring homes and would not provide the applicant full enjoyment and use of his property.

The potential for rockfall/boulder hazards to adjacent properties is relatively insignificant. The areas proposed for construction has been previously graded and disturbed. Construction would be concentrated on flat, stable areas where rockfall/boulder hazards are not known to exist.

Runoff from the roofs of the proposed house and barn would be collected and directed away from adjacent properties. We are in agreement that a drainage study should be completed prior to approval of any building permit.

We note that the State Department of Health maintains jurisdiction over the proposed septic tank and leach field system.

KOKOKAHI COMMUNITY ASSOCIATION

Staff Notes: Neighbors of the subject property shared numerous concerns about the project. Two correspondences from the Kokokahi Community Association sums up the majority of concerns the neighbors had regarding the project.

September 18, 2006

The point of entry is via a steep concrete drive that is an easement from adjacent property owners. Because of the sharp angle of approach from Kokokahi Place, the average car scrapes bottom and there is a potential to hang up truck, trailers, and other equipment. Does the developer have any plans to modify this entry? Will the easement agreement address the cost of modifications to the entry? Is an entry gate to the property planned? What arrangements will be made for access of emergency equipment to the property? Does this single entry to the property provide sufficient access for fire and emergency vehicles? Are other points of entry being considered? Who is responsible for wear and tear, and damages that result from construction equipment utilizing this steep and narrow entry to the property?

The horse barn appears to be in addition to the 5000 ft² allowed for buildings on conservation land. Is this allowed without a special variance? Where is the horse manure dumpster going to be located, and what is the plan to have it removed periodically? The proposal stated that the soil erosion potential is "extremely high." Is this a factor in the design and maintenance of the horse paddock to protect the properties below from flooding and mud slides in the event of heavy rains? Could horse trails be established on the property? Would this be covered by the current grading permit? Do any future owners automatically have a right to the barn and horses? How much insect infestation, vermin, and odor are expected if three horses are maintained on the property, and what is proposed to mitigate these impacts? What is proposed to remove the manure from the property? It was noted that two applications are made for hookup to the municipal sewer system, as well as a planned septic tank and leach field. Why this duplication of effort? If the septic tank needs to be emptied, will there be an approach to allow the truck to do so? Will horses be allowed on Kokokahi Place? Could allowing a barn on the property facilitate a zoning change to multi-family residential? Are there existing trail easements on the

property? Will they be marked and accessible to Kokokahi residents? Is access to the barn from the house planned? What would be the erosion impact of such a road?

With the present zoning, what are the restrictions relating to clearing land, removing mature trees, and planting additional trees and shrubs? What is the overall plan for this property? What are the other options being pursued, and can members of the Kokokahi community association be appraised of additions/modifications of the plan?

October 31, 2006

Our Association is opposed to having a barn and horses on the subject property. A potentially dangerous health hazard may be created by the combination of horses and feral pigs in close proximity. Horses will attract feral pigs which are abundant on the 56 acre parcel. Odor from the horses will attract pigs as will manure, urine, hay and other feed. We are concerned that according to the DEA, there will be "a minimum distance of about 40 feet between the corral fencing and the property line of the nearest homes neighboring the project site."

We believe a thorough study is required to determine the health risks of horses and feral pigs plus other infested wildlife at the proposed location. Feral pigs pose a physical hazard to humans and pets. Pigs can carry leptospirosis, trichinosis, and in rare cases, tuberculosis. They carry pseudo rabies. Leptospira organisms have been found in horses urine can be harmful to humans through contact with contaminated soil and water.

The DEA states, "Below the proposed horse barn, the property continues to steadily descent to the neighboring homes below located off of Kaneohe Bay Drive." The soil analysis states, "This soil is characterized by a rapid to very rapid runoff rate, and the erosion hazard is severe." During our heavier windward rains, pig and horse urine and dirty manure infested water will rapidly run onto, over and percolate into the neighbor's soil. The proposed fencing may be inadequate to stop pigs and other wildlife from getting into the pasture area.

Abutting owners are not the only residents at risk. Storm water runoff during heavy rains flood the roads in the area because the storm drains become blocked by debris. The water runs through yards and down streets and will go any were. If the barn and pasture area becomes contaminated, runoff will likely be contaminated.

We have attached the signatures of about 75 residents who oppose using the subject land for agricultural purposes. We are trying to prevent the dangers anticipated by having farm animals on property not suited for agricultural use because of inappropriate terrain and closeness to urban development.

Allowing horses described as pets on conservation land will surely open the door for possible commercial activity. We question the wisdom of providing a foothold for a business venture on this land, which is not suitable for public activity. Some of our reasons are: Once started, any non-permitted activity would be hard to stop. Car access to the property is difficult. It would be easy to board horses for profit. Equestrian riding and

riding lessons are possible on such a large piece of property. Breeding is hard to monitor. Easement access through the R-10 lot would encourage trail riding. Cutting a riding trail between the two condos would not be difficult. Large animals need a lot of space. Can the horses be exercised enough in the pasture area? The pasture and absorption bed share a common area. Truck and horse trailer traffic will become a real nuisance. Anticipate angry residents.

The undersigned residents, OBJECT to the proposed AGRICULTURAL USE AND 3-HORSE BARN within the Conservation District for the following reasons:

THREATENED HEALTH-Pigs, mongoose, rats, and flies attracted by horses, manure and food supply. Brucellosis, leptospirosis, trichinosis and pseudo rabies caused by feral pigs. Increased presence of pigs, rats, mongoose and flies in our yards and roadways.

LIMITED ACCESS-steep easement and narrow Kokokahi Place are inappropriate for horse trailers and a truck large enough to remove a two-yard dumpster containing the estimated 840 lbs of manure and bedding each week.

INCREASED EROSION AND DRAINAGE RUNOFF-Inadequate erosion and drainage control for contaminated runoff onto residential properties.

INAPPROPRIATE USE OF PRESERVATION/OPEN SPACE

By identifying three horses and a barn as an agriculture subzone, (HAR, 13-5-23, L1) DLNR is promoting commercial activity.

Staff notes: AGRICULTURE is an identified land use that could be applied for in this particular subzone of the Conservation District. Any type of commercial land use within the Conservation District would require a public hearing and approval by the Board of Land and Natural Resources. No commercial land use is proposed for this CDUA.

Applicant's Response

Access from Kokokahi Place

We understand you are concerned that the conditions of the access driveway from Kokokahi Place make it complicated for large vehicles and trailers to maneuver. We note that this access has been used to successfully build three homes to date. The driveway is inclined, and will require appropriate measures to safely and efficiently maneuver over it. As with the last three homes that were built utilizing the driveway access, contractors involved in construction activities and the residential use of the property would be responsible for providing traffic controls and precautions to maintain traffic safety along both Kokokahi drive and the access driveway. The proposed plans include an entry gate that would be located on the subject parcel. There are no plans at this time to modify the driveway adjacent to Kokokahi Place. While Kokokahi Place is a public road, the driveway is a private driveway that is controlled and managed by its owners, and any improvements would require the consent of the private owners.

Proposed horse barn and paddock and related activities

We note the opposition to the proposed barn and horses that would be kept on the property. The Board maintains jurisdiction over land use within the conservation district and will consider the merits of the application. A horse management plan was included as part of the Draft EA to address the specific needs associated with the care and maintenance of horses. The horses would be personal pets that would receive daily care and maintenance. The horses would not be allowed to roam freely on the property and would be cared for and maintained in accordance with the horse management plan and any conditions imposed by the BLNR. All activities and uses associated with the proposed project would be conducted in accordance with the requirements and conditions imposed by the BLNR.

We disagree with your October 31, 2006 letter that a “potentially dangerous health hazard may be created by the combination of horses and feral pigs in close proximity.” The Oahu Wildlife Biologist indicates that livestock operations do not typically attract feral pigs. Homeowners adjacent to large forest reserve areas have reported feral pigs in their backyard. Feral pigs are found in these areas because the large watershed provides the habitat and area necessary to support the pigs. In comparison, the forest reserve area surrounding Kokokahi is a small, isolated watershed with limited stream resources, and is not recognized as an area where feral pigs are commonly found. In the event that feral pigs are found on the property, appropriate eradication measures would be employed.

Project’s compatibility with surrounding Kokokahi Place community

Concern is expressed regarding the possible impacts of this project on the existing Kokokahi Place residents. The applicant proposes to maintain as much of the existing vegetation as possible, with tree removal limited to the dead trees that pose a fire hazard and the one banyan tree that has been affected by a fallen eucalyptus. There are no plans to establish horse trails, use the property for commercial purposes, or develop multi-family dwellings. The rumor of “condominium” dwellings is false, and is an incorrect presumption resulting from the recent efforts to register the property for condominium property regime (CPR). The term “condominium” refers to a specific form of property ownership and governing process that allows the two pieces of the property with different zoning designations to be owned by separate owners. The CPR designation does not indicate a form of multi-family development. The existing zoning regulations and density for the property remain in place, under which multi-family dwellings are not permitted.

Community Opposition

Your efforts to organize the community and represent the community before the BLNR are admirable. We acknowledge that some of the adjacent properties owners oppose the proposed barn and horses.

Additional Community Comments

It is clear to me that no state or C&C government agency accepts responsibility for contacting the majority of the abutting neighbors listed by the DLNR. The DEA indicates, "The horse corral will be a minimum of 40 feet from the nearest homes neighboring the project site." Who is supposed to contact them? They have no direct relationship to the Kokokahi Community Association.

I fear that development projects adjacent to vacant land tend to "creep". This project should not be allowed to be a foot in the door leading to more condominiums. In this case, the vacant land is already part of the CPR. Why is there no mention of the declaration of condominium Property Regime for the 56-acre parcel in the DEA and why does Mr. Cooper need this designation if construction of one house is already allowed?

Why has the DLNR allowed cutting of large trees?

Staff notes: Upon receipt of this information, Staff conducted a site inspection of the subject property and noted a dirt road that led to the previous developed site of the former residence. Staff noted maintenance clearing of the existing road and general yard clearing (cut grass) of the area surrounding the former residence. Staff noted standing dead trees. Staff noted other than previously disturbed areas by the former residents and adjacent neighbors, the remainder to the property did not appear to be disturbed.

Applicant's Response

Notification to Adjacent Property Owners

The landowner provided an initial presentation regarding the project to the Kaneohe Neighborhood Board on June 15, 2006 and also attended and spoken at two subsequent meetings. In addition, the applicant has met with you in person and has had several phone calls with you. Information regarding the project was forwarded to the Kokokahi Community Association, the Kaneohe Neighborhood Board and the Kaneohe Library by the OCCL. The draft EA was published in the August 23, 2006 edition of the Environmental Notice. All adjoining property owners were invited to attend an informal open house to discuss his proposed plans and to visit the property. There is no legal requirement to notify adjacent property owners.

Condominium Property Regime

No multifamily housing is planned for this property. The term "condominium" indicates a form of property ownership and is not an indicator of density, or a style or type of multifamily development. The CPR action enables the dual zoned property to be owned by separate owners. The existing zoning and density regulations for the property remain in place. We emphasize that only one SFR is being proposed pursuant to Conservation District rules.

Staff notes: Late comments contained concerns regarding the property's access easement, the allowance of CPR on Conservation District land and why the applicant is not required to hook up and connect to the City's wastewater system. Staff notes, this particular easement is between private landowners and does not involve government. Furthermore the driveway/access easement is not in the Conservation District. Regarding CPR's, the DLNR does not regulate CPR's. This is under the State Department of Commerce and Consumer's Affairs jurisdiction. Regarding sewerage, connection requirements to the City's wastewater system is under the City & County of Honolulu's jurisdiction.

ANALYSIS

Following review and acceptance of the application for processing by the Department, the applicant was notified by letter dated August 7, 2006, of the following:

1. The proposed use is an identified land use in the General subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), R-8, SINGLE FAMILY RESIDENCE, (D-1). "A single family residence that conforms to design standards as outlined in this chapter." Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to § 13-5-40, of the Hawaii Administrative Rules, a Public Hearing will not be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project;
4. The proposed project is not within the Special Management Area.

Upon further review of the application and the Draft Environmental Assessment, the OCCL notified the applicant on September 26, 2006 that the proposed three-horse barn shall be considered as an agricultural land use. A barn is customarily and traditionally utilized for agricultural purposes. Therefore, the barn is an identified land use that could be applied for pursuant to the HAR, §13-5-23, L-1, AGRICULTURE and as such would be considered as part of this CDUA.

In addition, a Finding of No Significant Impact (FONSI) to the environment was published in the December 23, 2006 Environmental Notice.

CONSERVATION DISTRICT CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in §13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the General subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

A Single Family Residence is an identified land use in the General subzone pursuant to §13-5-25, HAR, R-8, SINGLE FAMILY RESIDENCE, (D-1), A single family residence that conforms to design standards as outlined in Chapter 13-5 and the Barn is an identified land use that could be applied for with a management plan pursuant to §13-5-25, HAR, L-1 AGRICULTURE.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

The property is outside the City and County's Special Management Area but lies within the States Coastal Zone management Area, which includes all lands of the State. No impacts to the coastal zone are anticipated as a result of the proposal. The proposed structures would be less than 25 feet in height and would be partially concealed by the existing tree canopy.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

The proposal would be concentrated within 5-acres of the ≈ 56-acre parcel that was previously graded and affected. Impacts to the natural resources within the surrounding area, community or region are considered to be minor.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

A home previously existed on the site. The area is surrounded by homes in the Urban R-5 and R-10 zoning. A SFR appears to be compatible with the surrounding

uses of the area. However, Staff believes horses and a barn are not a compatible use in the proposed location as it is located in close proximity to neighboring residences. The steep terrain of the access way and Kokokahi Place may present transportation challenges for animal waste removal and has the potential to affect the community on a weekly basis. Air quality of the surrounding neighborhood may also be affected.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

Just 10% of the property shall be affected by the proposal. The remainder of the property would remain as private undeveloped, forestlands and would be maintained in accordance with the State Land Use district.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

There will be no subdivision of land for this proposed project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed use will put a single-family residence in a setting compatible with the neighborhood. This proposed land use with proper mitigation should have no affect on public health, safety and welfare.

Regarding the proposed barn and horse maintenance, air quality may be compromised; the terrain of the road is not conducive to transporting large vehicles of animal waste and may have the potential to affect the public health, safety and welfare of the Kokokahi residences.

DISCUSSION

There was much discussion from the community regarding this application. From the comments received, the community strongly objects to the proposed barn and keeping of horses on the property. The proposed location of the barn places it near to existing residential use. Staff believes the keeping of livestock is not compatible in this particular location as it may have the potential of affecting the quality of life of the neighbors down slope as air quality may be compromised and the terrain of the road and access driveway is not conducive to transporting large vehicles of animal waste and may have the potential to affect the public health, safety and welfare of the Kokokahi residences.

During heavy rainfall, drainage in this particular region appears to be a problem. Comments received have stated that neighboring properties have been flooded; there are

no drainage easements for the property; and the City provides sand bags to keep water from the homes along Kokokahi Place when street drainage overflows. Furthermore, the soil is characterized by a rapid to very rapid runoff rate, and the erosion hazard is severe. Staff notes the applicant is in agreement that a drainage study should be completed prior to approval of any building permit.

The subject property is part of a Condominium Property Regime (CPR), effective July 17, 2006 consisting of two units- Unit 45-020, zoned R-5 under the City and County of Honolulu's jurisdiction and Unit 45-234A zoned P-1 under the jurisdiction of the State of Hawaii. Pursuant to the Hawaii Revised Statutes (HRS), §514B-3, a unit means a physical or spatial portion of the condominium designated for separate ownership or occupancy. Staff notes one of the proposed uses is a single-family residence. Staff notes a family is defined as a group of people related by ancestry or marriage or a social unit consisting of parents and the children they rear. As such, a maximum of one family could potentially occupy the proposed SFR on Conservation District land whether there is a CPR on the land or not.

RECOMMENDATION:

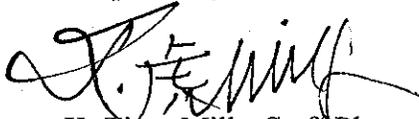
- A. Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources DENY without prejudice a portion of this application for a 1596 ft² horse barn due to the following reasons:
1. Staff believes that the keeping of horses and the associated barn, as proposed, is not compatible with and shall have an adverse effect on the existing neighborhood.
- B. Staff further recommends that the Board of Land and Natural Resources APPROVE this application for an ≈ 4,513 ft² Single Family Residence with living areas consisting of three bedrooms, 4 bathrooms, a kitchen, dining room, living room, family room, hallways, a stairway, a 2-car garage, the associated septic system, a 368 ft² pool, a 60 ft² Jacuzzi, a 54 ft² Pavilion and an entrance gate located at Keana, Kaneohe, island of Oahu, TMK: (1) 4-5-032:001 subject to the following conditions:
1. The applicant understands that if there is an appeal filed on the Final Environmental Assessment, the Board's approval is temporarily stayed until the end of the appeal;
 2. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
 3. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission

- of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
4. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
 5. The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
 6. All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;
 7. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;
 8. Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
 9. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
 10. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
 11. The applicant will minimize visual impacts using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;

12. Prior to approval of construction plans, a drainage study shall be conducted by a certified hydrologist;
13. In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
14. The applicant shall consult with the State Historic Preservation Department (SHPD) in regards to the requirements of a monitoring program. Furthermore, the SHPD shall be notified via facsimile upon the on-set and completion of the permitted undertaking;
15. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
16. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
17. Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;
18. Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
19. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
20. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
21. Cleared areas shall be re-vegetated within thirty days of the completion of construction unless otherwise provided for in a plan on file with the Department;

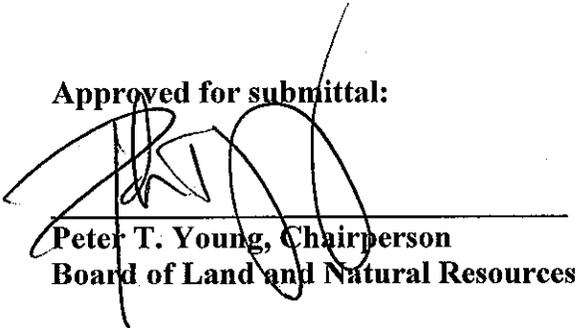
22. Obstruction of public roads, trails, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;
23. The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules (Title 13-5);
24. Other terms and conditions as may be prescribed by the Chairperson; and
25. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

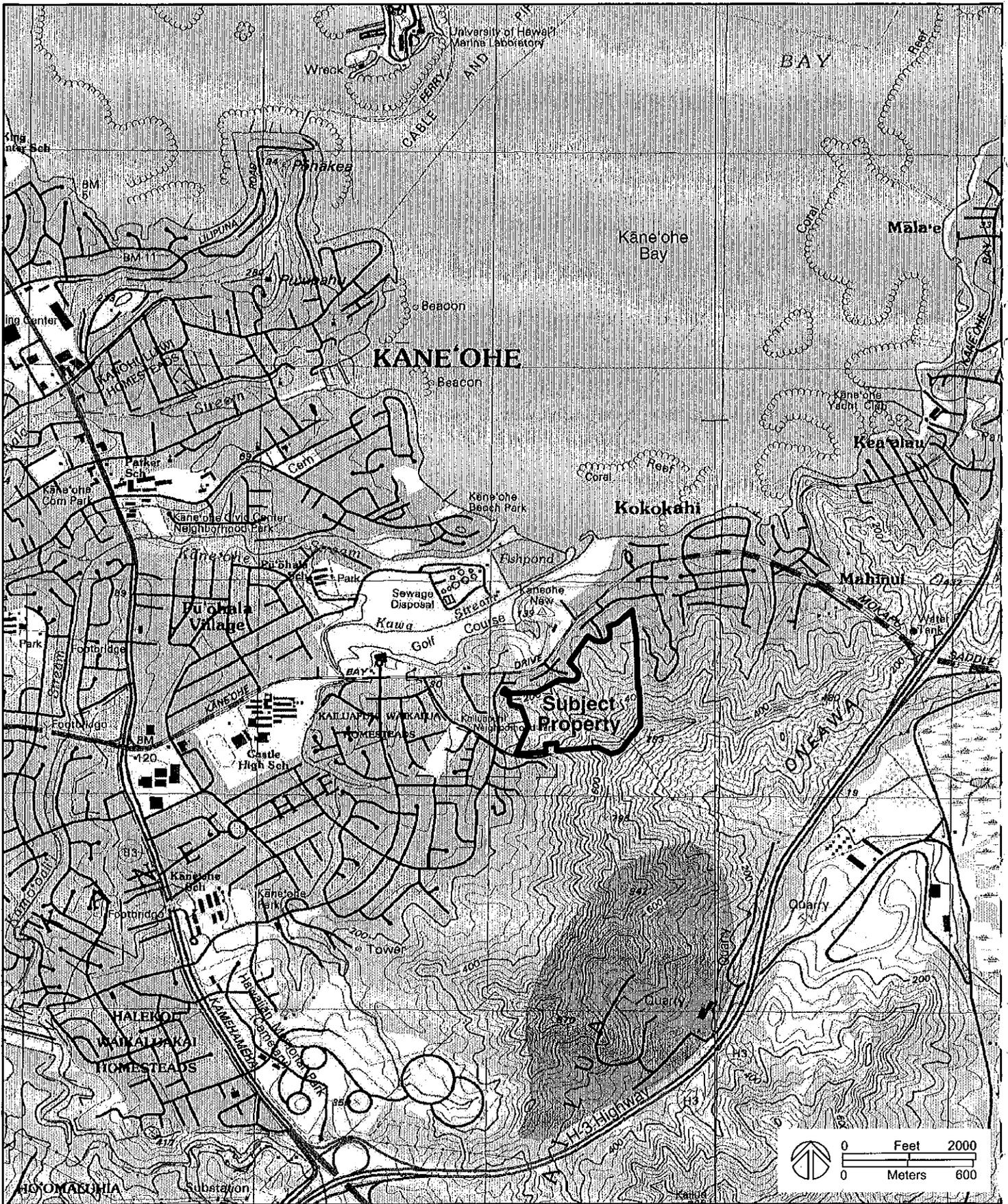


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



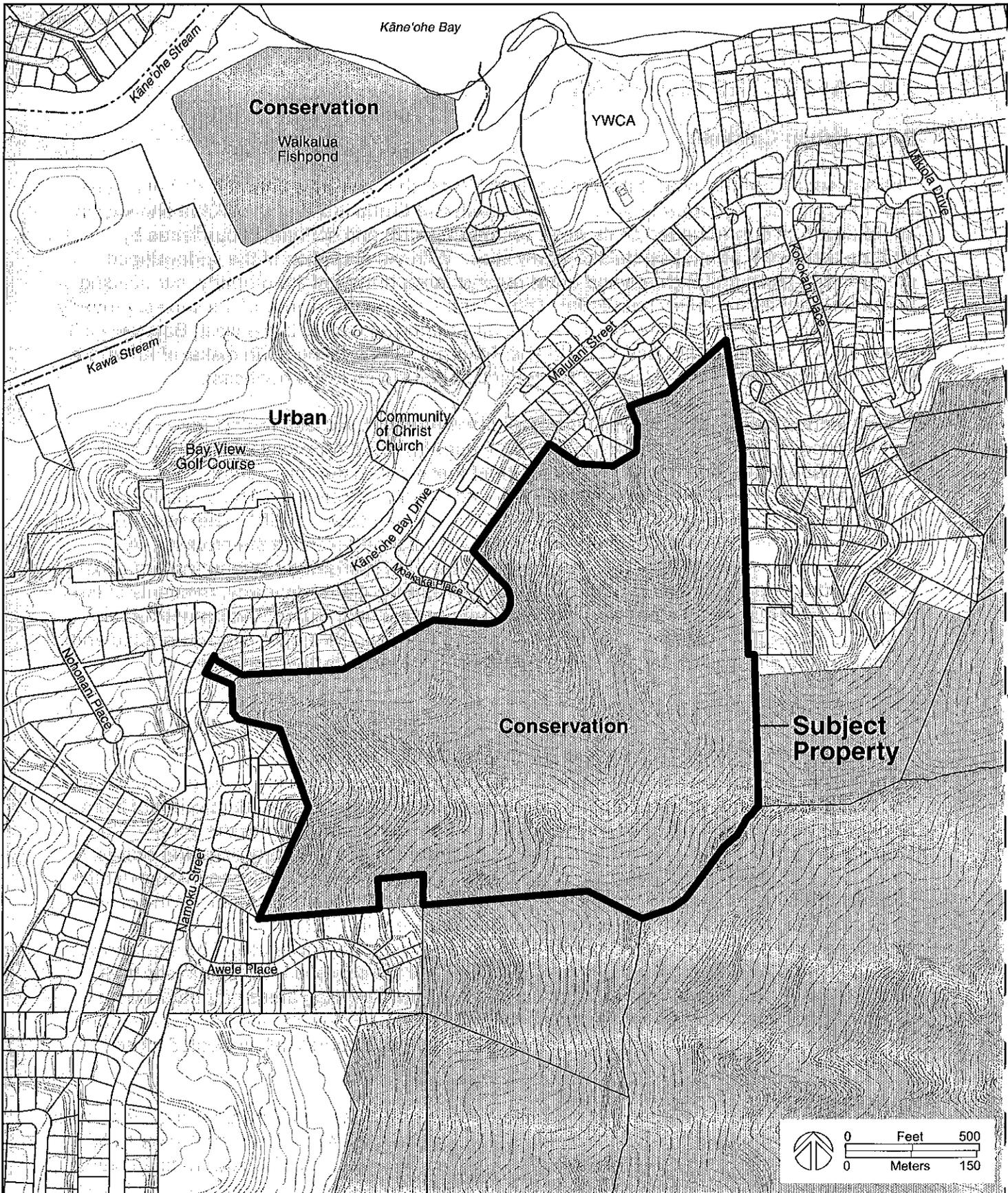
Peter T. Young, Chairperson
Board of Land and Natural Resources



Vicinity Map

Cooper Residence EA
 Kāne'ohe, O'ahu, Hawai'i

EXHIBIT 2

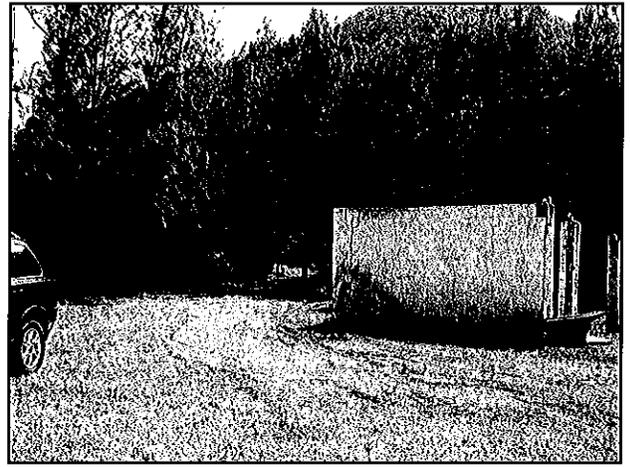


State Land Use Districts

Cooper Residence EA
 Kāne'ohe, O'ahu, Hawai'i



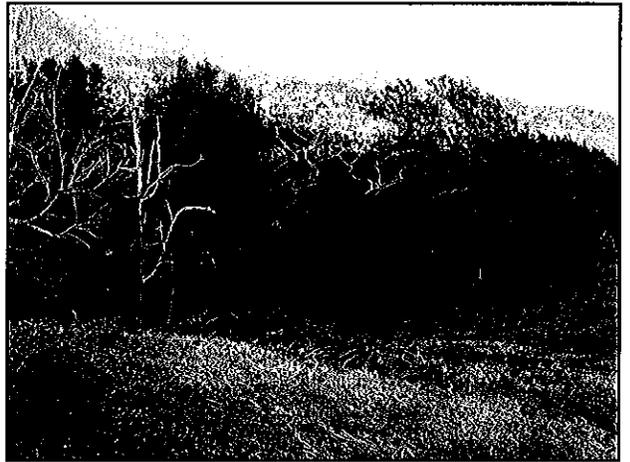
1. View of driveway easement from property (looking east)



2. View of driveway and southeast corner of project site (looking southwest)



3. View of proposed house site (looking southeast)



4. View of north section of project site (looking west)



5. View of proposed horse barn site (looking southeast)



6. View of property from across Kāne'ohe Bay Drive (looking southeast)

Property Photographs

Cooper Residence EA
Kāne'ohe, O'ahu, Hawai'i

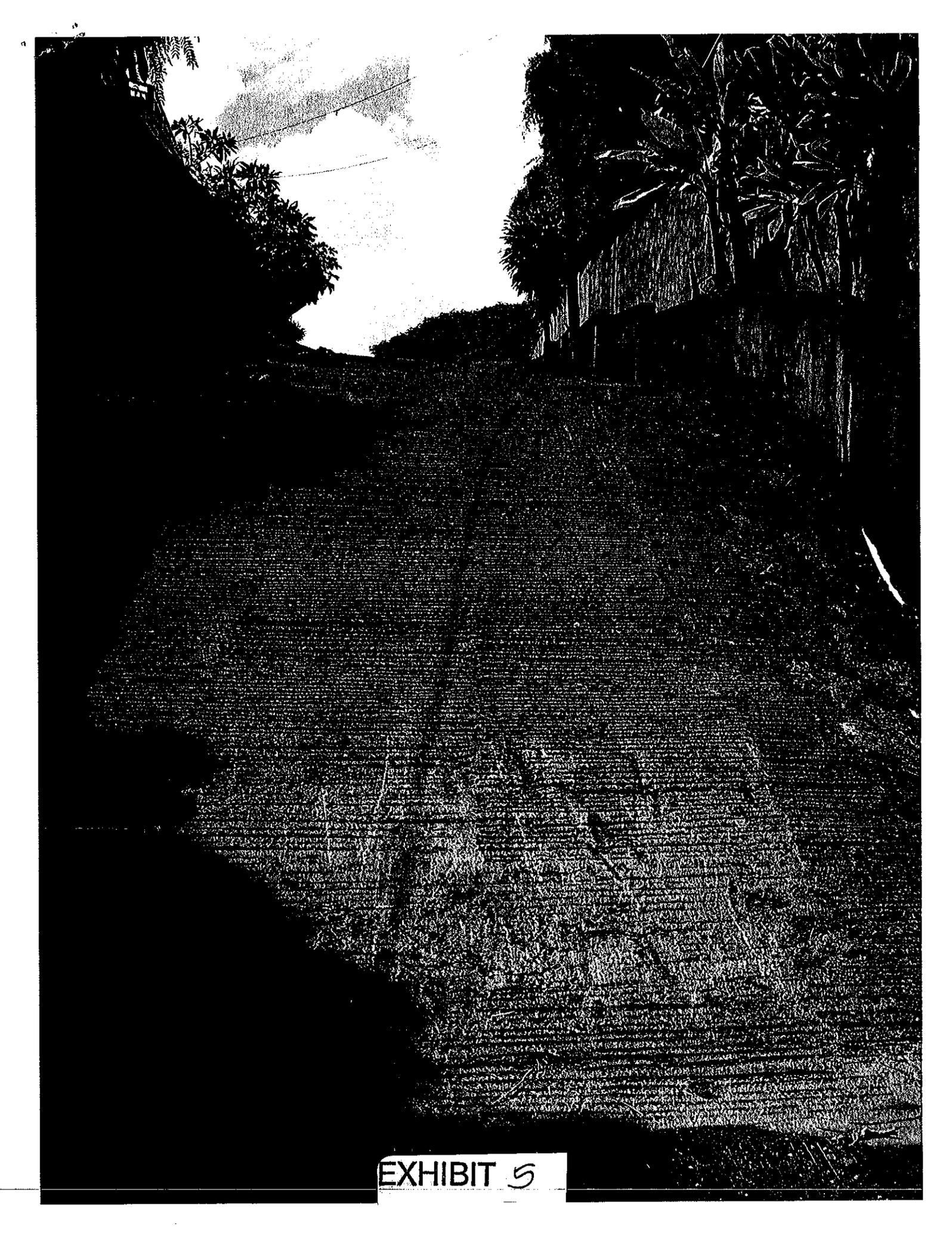
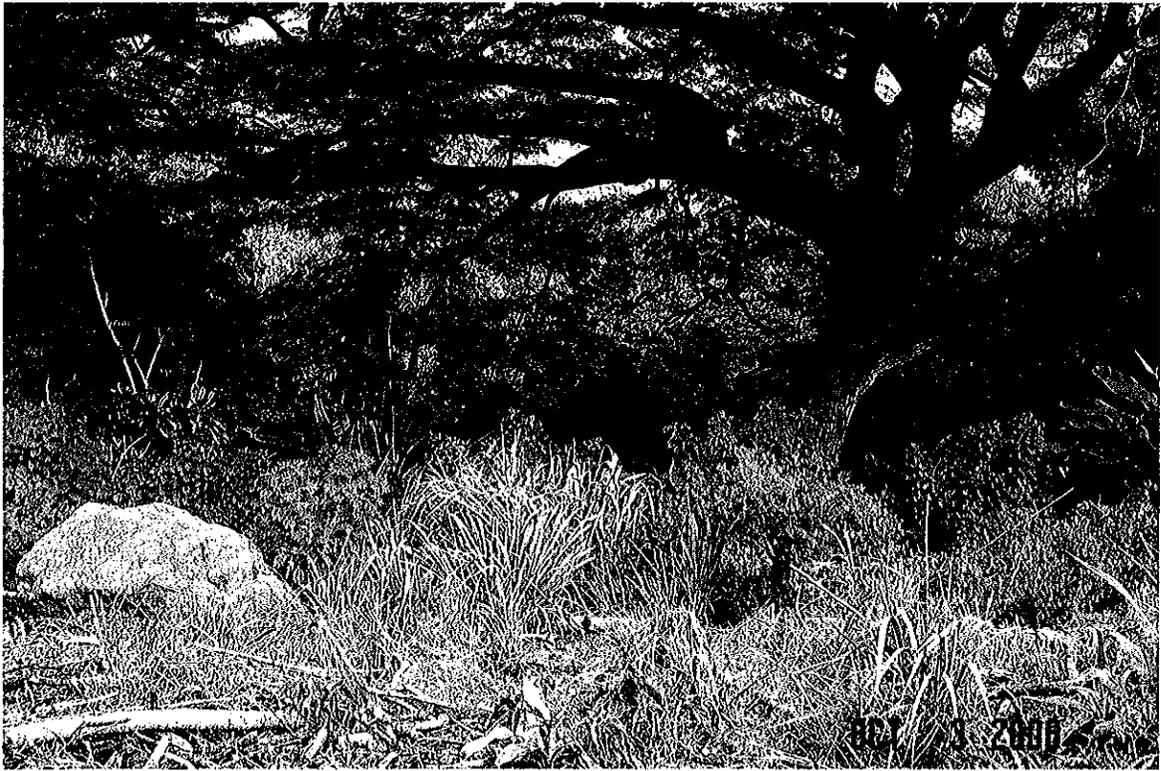


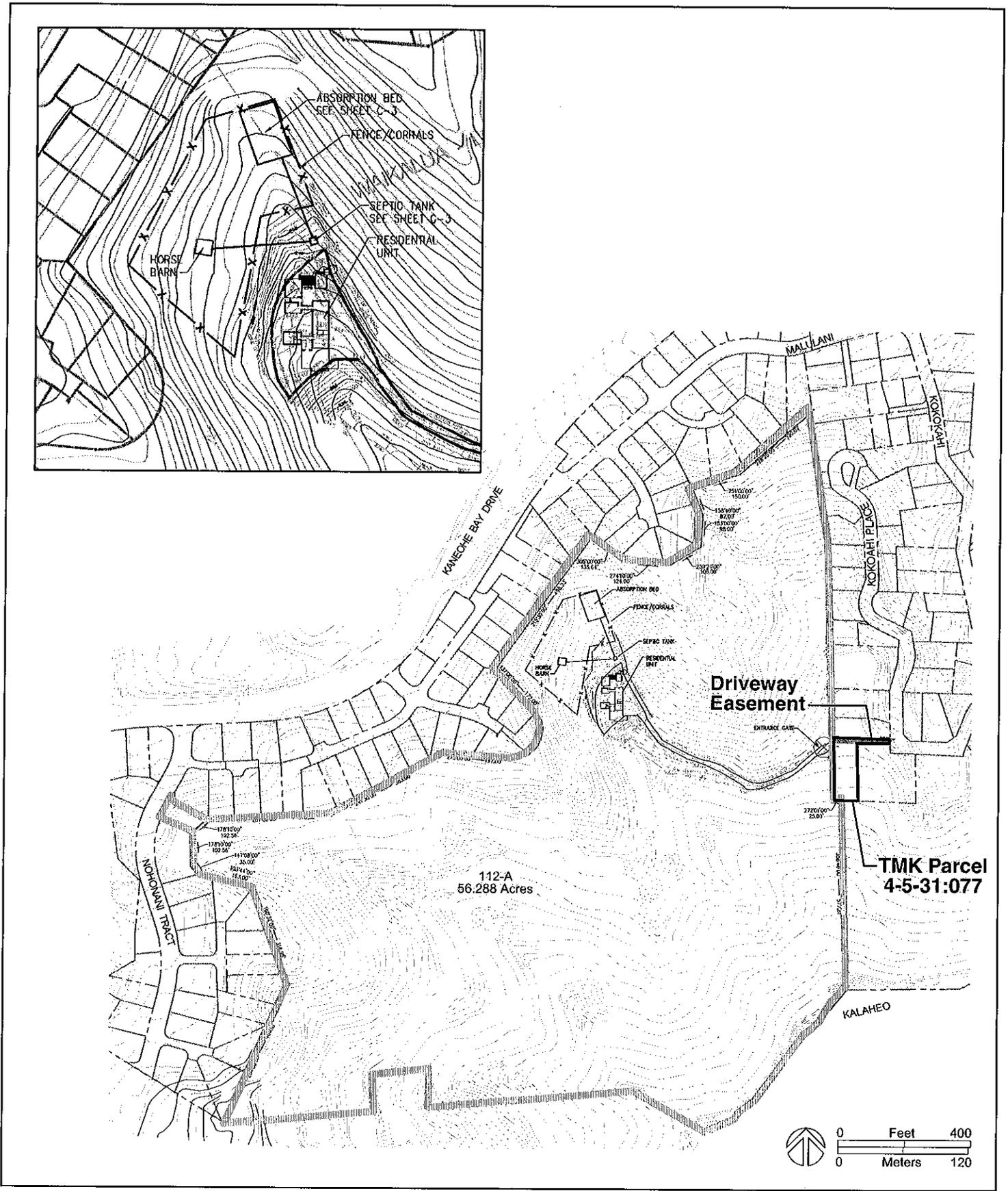
EXHIBIT 5



Along road on property to proposed site.



EXHIBIT 6



Proposed Site Plan

Cooper Residence EA
 Kāneʻohe, Oʻahu, Hawaiʻi

EXHIBIT 7



EXHIBIT 8



**ARCHITECTURE
INTERIOR DESIGN**

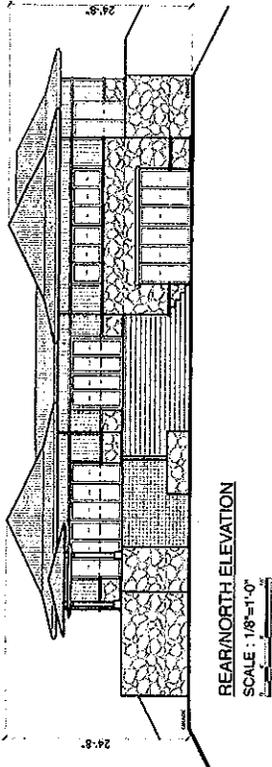
Peter Vincent & Associates, LLC
1021 Smith Street, Penthouse
Honolulu, Hawaii 96817
T: (808) 524-8255
F: (808) 523-3419
www.pvarchitecture.com

He Mea Waiwai Loā
TMK: 45-032-001
45-224A Kōkōkahi Place
Aiea, Hawaii 96701

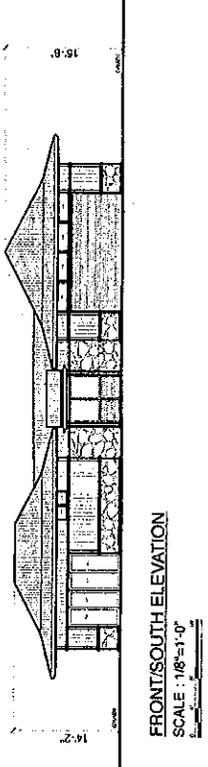
Revisions:

Project: 05-053.02
 Date: 05/09/06
 Drawing:
 Main House Elevations
 Scale: 1/8" = 1'-0"
 Drawn By:

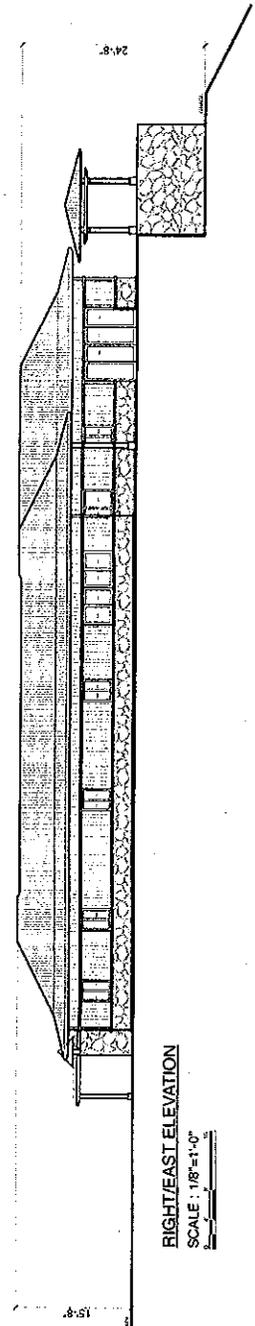
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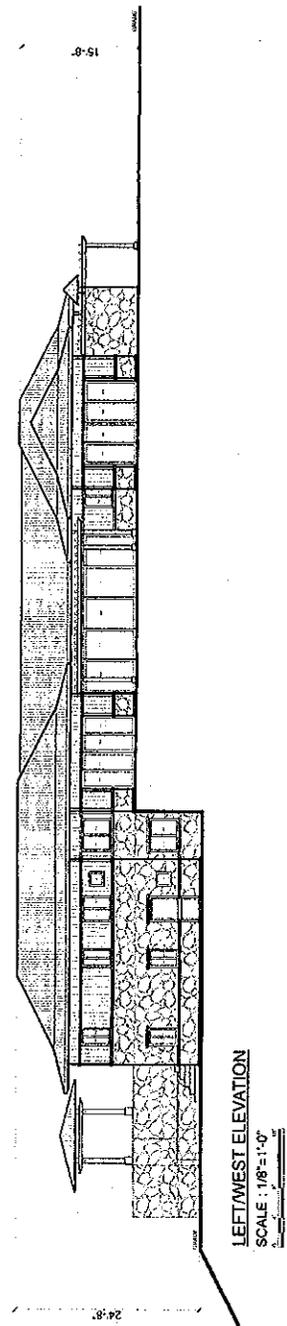
REAR/NORTH ELEVATION
SCALE: 1/8"=1'-0"



FRONT/SOUTH ELEVATION
SCALE: 1/8"=1'-0"



RIGHT/EAST ELEVATION
SCALE: 1/8"=1'-0"



LEFT/WEST ELEVATION
SCALE: 1/8"=1'-0"

EXHIBIT 9



**ARCHITECTURE
INTERIOR DESIGN**

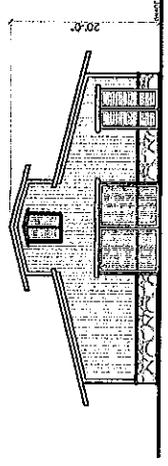
Peter Vincent & Associates, LLC
1021 Smith Street, Fernihouse
Honolulu, Hawaii 96817
T: (808) 524-8235
F: (808) 523-3419
www.pvarchitecture.com

He Mea Waiwai Loa
TMK: 4-0-02-001
45-234A Kokoahi Place
Aiea, Hawaii 96701

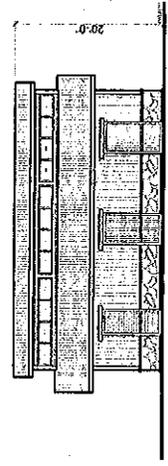
Revisions:

 Project: 05-053.02
 Date: 05/09/06
 Drawing: Horse Barn Floor Plan and Elevations
 Scale: 1/8" = 1'-0"
 Drawn By:

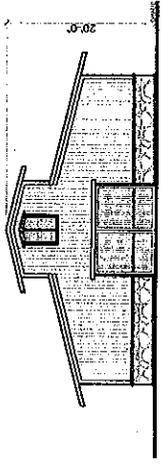
A-4



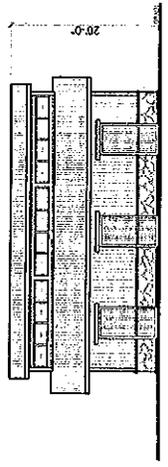
HORSE BARN REAR/NORTH ELEVATION
SCALE: 1/8"=1'-0"



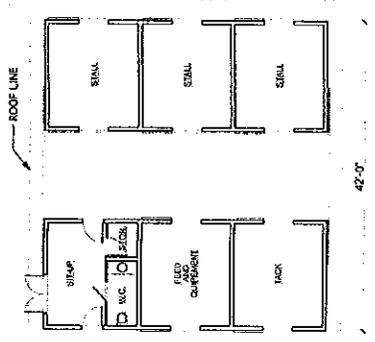
HORSE BARN LEFT/WEST ELEVATION
SCALE: 1/8"=1'-0"



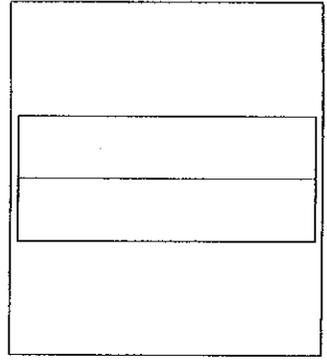
HORSE BARN FRONT/SOUTH ELEVATION
SCALE: 1/8"=1'-0"



HORSE BARN RIGHT/EAST ELEVATION
SCALE: 1/8"=1'-0"



HORSE BARN FLOOR PLAN
SCALE: 1/8"=1'-0"



HORSE BARN ROOF PLAN
SCALE: 1/8"=1'-0"

EXHIBIT 12



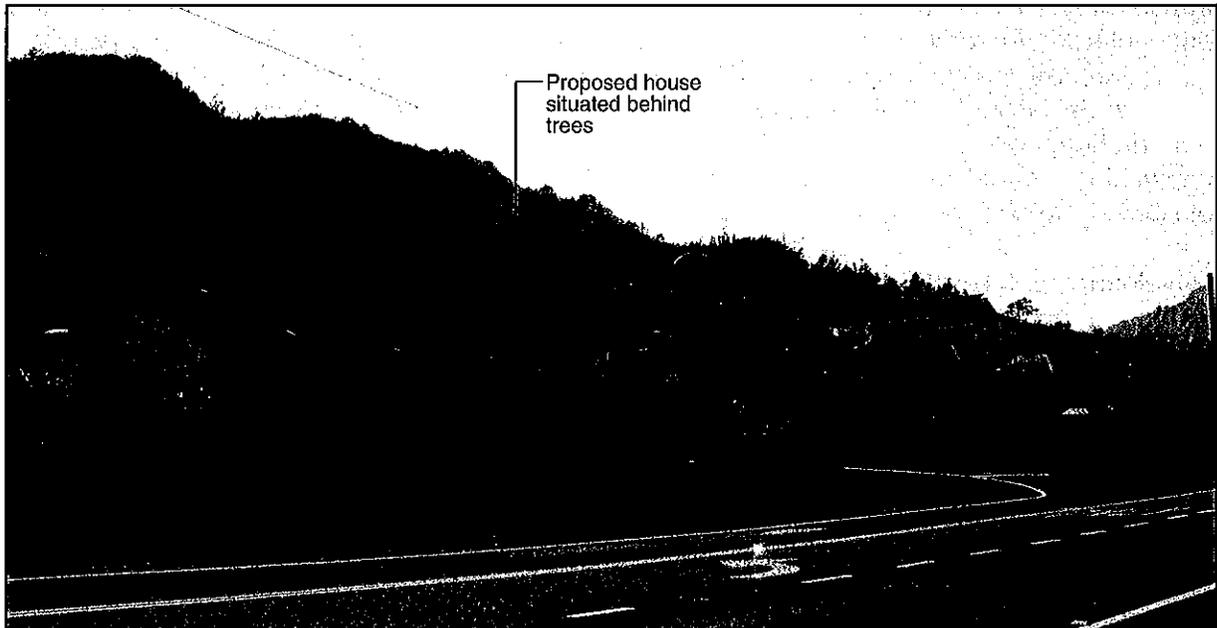
Proposed Barn Site



Edge of property adjacent to Urban State Land Use District



View from across Kaneohe Bay Drive looking southeast



View from the intersection of Kaneohe Bay Drive and Mālūlani Street looking southwest

Proposed Views

Cooper Residence EA
Kāne'ohe, O'ahu, Hawai'i

EXHIBIT 14